



M E M O R A N D U M F R O M T H E
O F F I C E O F T H E C I T Y
A T T O R N E Y

DATE: February 9, 2000

TO: Honorable Mayor & City Council Members

FROM: Randall A. Hays, City Attorney *Randy*

RE: Public Benefits Grant Program – Farmers & Merchants Bank

At your meeting of February 2, 2000, there was an item involving the City's Public Benefits Program Grant to the Farmers & Merchants Bank. That item is again before you at this meeting. It is designated as item one on the regular calendar.

Apparently due to articulated conflicts by three members of the Council, a situation was created where there was the lack of a quorum to conduct business relative to that item. This circumstance has been anticipated both in the Political Reform Act and in the common law.

Section 87101 of the Political Reform Act provides that the Act does not prevent a public official from making or participating in the making of a governmental decision to the extent that the participation is legally required for the body to act or render a decision. Under the common law it is known as the Rule of Necessity.

Clearly what is needed in this circumstance is for one Council Member to be rehabilitated under those theories in order to again create a Council quorum so that action can be taken. In Re Hudson, No. 77-007, 4FPPC OPS 13, the most frequently used process to arrive at the member who among the disqualified members will participate is to engage in a random draw. I have recommended this to the City Clerk. She will have facilities available to accommodate a random draw prior to the Council considering this item. This is not the only manner in which a Council Member could be selected in order to constitute a quorum, however, rock, scissors, paper or flipping a coin don't seem to have as much decorum associated with them as a draw would.

Once the draw is completed and a winner (loser?) is known, the Council may then act since they will have a quorum of three. The Council Member who had the conflict must prior to acting on the item clearly state what the conflict was that caused them to be disqualified initially. Once that is done the Council may then move to act on the item. If you need any assistance in articulating what your conflict is with regard to this item, I will be glad to assist in any way I can.



CITY OF LODI

COUNCIL COMMUNICATION

AGENDA TITLE: Public Benefits Program Grant – Farmers & Merchants Bank Demand-side Management Project (\$22,530.75)

MEETING DATE: February 16, 2000

PREPARED BY: Electric Utility Director

RECOMMENDED ACTION: That the City Council approve a Public Benefits Program grant in the amount of \$22,530.75 to Farmers & Merchants Bank as part of a demand-side management project at the bank's 121 W. Pine Street main office complex.

BACKGROUND INFORMATION: Farmers & Merchants Bank embarked upon a tenant improvement project for the second floor of their main office (located at 121 W. Pine Street) in late 1999. The project is nearing completion.

As part of the tenant improvements, Farmer & Merchants Bank has installed a number of energy efficient products and materials, including:

- high efficiency air conditioning units & variable air volume boxes;
- state-of-the-art fluorescent lighting (compact fluorescent, T-8 lamping, electronic ballasts);
- energy management system (designed to provide optimum efficiency of HVAC and lighting system).

Based upon the products and materials installed, Farmers & Merchants Bank should realize energy savings in excess of 10 percent on a monthly basis. The Public Benefits Program, administered by the City of Lodi Electric Utility, provides a 25 percent matching grant (25% of the materials cost) for commercial/industrial customers who install energy conservation measures, such as fluorescent lighting, highly efficient HVAC systems, day-lighting opportunities, increased wall or ceiling insulation, etc.

The City of Lodi Electric Utility, in conjunction with its energy services partner (Energy Masters International), has reviewed and approved the materials identified as energy or highly efficient, and respectfully recommends City Council approval of this Public Benefits Program grant.

FUNDING: 164605 - Public Benefits Program – Category: Demand-side Management

Funding Available: Vicky McAthie
Vicky McAthie, Finance Director

Alan N. Vallow
Alan N. Vallow
Electric Utility Director

PREPARED BY: Rob Lechner, Manager of Customer Programs

ANV/RL/1st
C: City Attorney

APPROVED: _____

H. Dixon Flynn
H. Dixon Flynn - City Manager

RESOLUTION NO. 2000-26

A RESOLUTION OF THE LODI CITY COUNCIL AUTHORIZING THE CITY MANAGER
TO PROVIDE A PUBLIC BENEFITS PROGRAM GRANT – DEMAND-SIDE
MANAGEMENT PROJECT TO FARMERS & MERCHANTS BANK

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WHEREAS, the State has mandated that beginning January 1, 1998, the City of Lodi is obligated to fund various programs through a Public Benefits Charge (PBC) based on a historical electric revenue requirement; and

WHEREAS, the requirement amounts to approximately \$1M per year that must be dedicated to qualifying programs such as energy efficiency. A further stipulation is that these efforts must be done on the customer's side of the meter in order to qualify; and

WHEREAS, Farmers & Merchants Bank has embarked upon a tenant improvement project for the second floor of their main office located at 121 W. Pine Street in late 1999; and

WHEREAS, as part of the tenant improvements, Farmers & Merchants Bank has installed a number of energy efficient products and materials which include 1) high efficiency air conditioning units and variable volume boxes; 2) state-of-the-art fluorescent lighting (compact fluorescent, T-8 lamping, electronic ballasts); and 3) energy management system (designed to provide optimum efficiency of HVAC and lighting system); and

WHEREAS, the Public Benefits Program administered by the Electric Utility Department provides a 25 percent matching grant (25% of the materials cost) for commercial/industrial customers who install energy conservation measures, such as fluorescent lighting, highly efficient HVAC systems, day-lighting opportunities, increased wall or ceiling insulation, etc.; and

WHEREAS, the City of Lodi Electric Utility in conjunction with its energy services partner, Energy Masters International, has reviewed and approved the materials identified as energy or highly efficient, and recommends approval of this Public Benefits Program grant.

BE IT RESOLVED, that the Lodi City Council hereby authorizes the City Manager to provide a Public Benefits Program Grant to Farmers & Merchants Bank for their tenant improvement project for the second floor of their main office located at 121 W. Pine Street in the amount of \$22,530.75.

Dated: February 16, 2000

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I hereby certify that Resolution No. 2000-26 was passed and adopted by the Lodi City Council in a regular meeting held February 16, 2000 by the following vote:

AYES: COUNCIL MEMBERS – Hitchcock, Nakanishi and Mann (Mayor)

NOES: COUNCIL MEMBERS – None

ABSENT: COUNCIL MEMBERS – None

ABSTAIN: COUNCIL MEMBERS – Land and Pennino


ALICE M. REIMCHE
City Clerk